

REMARKS

Claims 69, 71 and 72 have been amended. Claims 22-25, 27, 30-32, 66-67, and 69-72 remain pending in the present application. Claims 1-21, 26, 28, 29, 33-65, and 68 have previously been cancelled. Basis for the amendments can be found throughout the specification, drawings and claims as originally filed.

CLAIM REJECTIONS UNDER 35 U.S.C. §103(a)

The Examiner has rejected Claims 22, 24, 27, 30, 31, 69, 71 and 72 under 35 U.S.C. §103(a), alleging them to be unpatentable over Richardson et al. (U.S. Patent No. 5,283,932) in view of Gregory (U.S. Patent No. 3,710,761). The Examiner alleges that this combination would render Applicants' claims obvious to those skilled in the art.

Independent Claims 69, 71 and 72 have been amended to further clarify that the arcuate base surface continuously extends across the channel between the sidewalls. This is clearly shown in FIG. 10.

The Richardson et al. and Gregory combination fails to disclose or illustrate Applicants' independent claims. Richardson et al. illustrates a zipper assembly which seals a plastic bag. The zipper assembly has a body 33 with a base 32, with a depending separator finger 32a. While a portion of the base may be flat, the surface is not continuously arcuate across the channel as claimed by Applicants. Further, to replace the separator finger 32a by the arcuate surface of Gregory would render the Richardson et al. device inoperable for its intended purpose. As seen in FIG. 4 of the Richardson et al. patent, the separator finger enables the bag to be separated by the closure. With a continuous curved surface as suggested by the Examiner, this would not occur.

The Court of Appeals for the Federal Circuit in In re Gordon et al., 221 USPQ 1125 (Fed. Cir. 1984) at 1127 has long held that it is not obvious to combine references where utilizing the reference as suggested by the Examiner renders the device inoperable for its intended purpose. Here, if the Examiner substitutes a continuous arcuate surface for the Richardson et al. separating finger, it is inoperable to open the bag. Accordingly, Applicants believe independent Claim 69, 71 and 72 to be patentably distinct over the art cited by the Examiner.

Accordingly, Applicants believe Claims 22, 24, 27, 30, 31, 69, 71 and 72 would be patentably distinct over the art cited by the Examiner.

The Examiner has rejected Claim 23 under 35 U.S.C. §103(a) as being unpatentable in view of the above references further in view of Frydenberg (U.S. Patent No. 4,576,307).

The Frydenberg reference fails to overcome the deficiencies of the Examiner's combination. Accordingly, Applicants believe Claim 23 to be patentably distinct over the Examiner's combination with Frydenberg.

The Examiner has rejected Claim 25 under 35 U.S.C. §103(a) as being unpatentable over Richardson et al. in view of Gregory further in view of Savicki (U.S. Patent No. 6,981,299).

The Savicki reference was filed in 2001. This is three years after the Applicants' priority date. Accordingly, Savicki is an improper reference.

The Examiner has rejected Claim 32 under 35 U.S.C. §103(a) as being unpatentable over Richardson et al. in view of Gregory further in view of Eklof et al. (U.S. Patent No. 5,275,027) and Weavers (U.S. Patent No. 4,153,178).

The Eklof and Weavers references fail to overcome the deficiencies of the Richardson et al. and Gregory combination. Accordingly, this combination would not render Claim 32 obvious to those skilled in the art.

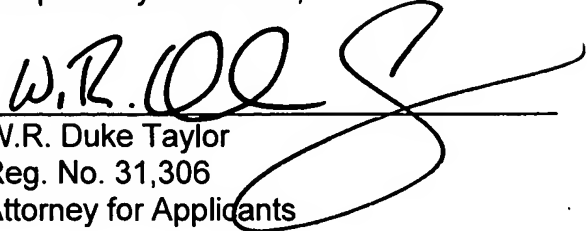
The Examiner has rejected Claims 66, 67, and 70 under 35 U.S.C. §103(a) as being unpatentable over Richardson et al. in view of Gregory further in view of Turvey et al. (U.S. Patent No. 6,442,804) and Gutman (U.S. Patent No. 3,660,875).

Turvey et al. and Gutman fail to overcome the deficiencies of the Richardson et al./Gregory combination. Further Turvey et al. was filed in 1999, a year after Applicants' priority date. Accordingly, Turvey et al. is an improper 35 U.S.C. §103(a) reference.

In light of the above amendments and remarks, Applicants submit that all pending claims are in condition for allowance. Accordingly, Applicants respectfully request the Examiner to pass the case to issue at his earliest possible convenience.

Should the Examiner have any questions regarding the present application, he should not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,


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